

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE NEW ENGLAND COMPOUNDING)
PHARMACY, INC. PRODUCTS) MDL No. 2419
LIABILITY LITIGATION)
Plaintiffs,) Docket No. 1:13-md-2419 (RWZ)
)
This document relates to:)
)
Armetta, et al. v. Box Hill Surgery Center,)
LLC, et al.)
No. 1:14-cv-14022-RWZ)
)
Bowman, et al. v. Box Hill Surgery Center,)
LLC, et al.)
No. 1:14-cv-14028-RWZ)
)
Davis, et al. v. Box Hill Surgery Center, LLC,)
et al.)
No. 1:14-cv-14033-RWZ)
)
Dreisch, et al. v. Box Hill Surgery Center,)
LLC, et al.)
No. 1:14-cv-14029-RWZ)
)
Farthing, et al. v. Box Hill Surgery Center,)
LLC, et al.)
No. 1:14-cv-14036-RWZ)
)
Kashi, et al. v. Box Hill Surgery Center, LLC,)
et al.)
No. 1:14-cv-14026-RWZ)
)
Torbeck, et al. v. Box Hill Surgery Center,)
LLC, et al.,)
No. 1:14-cv-14023-RWZ)
)
Handy v. Box Hill Surgery Center, LLC, et al.)
No. 1:14-cv-14019-RWZ)
)

STIPULATION OF MARYLAND
PLAINTIFFS AND DEFENDANTS BOX
HILL SURGERY CENTER, LLC, RITU
T. BHAMBHANI, M.D., AND RITU T.
BHAMBHANI, M.D., LLC, RE:
MOTION TO DISMISS

COME NOW the Plaintiffs in the above-captioned cases (collectively, hereinafter “Maryland Box Hill Plaintiffs”), by and through their undersigned counsel, and Defendants Box Hill Surgery Center, LLC, Ritu T. Bhamhani, M.D., and Ritu T. Bhamhani, M.D., LLC, (hereinafter, collectively “Box Hill Defendants”) by and through their undersigned counsel, who stipulate and agree as follows:

1. On January 13, 2015, the Box Hill Defendants filed a Motion to Dismiss Negligence, Informed Consent, Battery, Respondeat Superior¹, Civil Conspiracy, Strict Liability,² Consumer Fraud (both under Maryland’s and Massachusetts’ consumer protection statutes), Wrongful Death, Loss of Consortium, and Punitive Damages Claims found in the Maryland Box Hill Plaintiffs’ Complaints for Failure to State a Claim Upon Which Relief Can be Granted According to F.R.C.P. 12b(6) (The “MTD”). Maryland Box Hill Plaintiffs’ responses to the MTD were due by January 27, 2015.

2. During the January 14, 2015, NECC Status Conference before the Honorable Rya W. Zobel, the Court on the record stayed the deadline for the Maryland Box Hill Plaintiffs to file responses to the Box Hill Defendants’ Motion to Dismiss. To aid the Court, the MDL Plaintiffs’ Steering Committee (“PSC”) and other interested parties worked on establishing a proposed Case Management Order to efficiently deal with multiple MTDs filed by clinic defendants without repeated filings, briefings and argument, given the Court’s prior rulings on similar motions involving other clinical entities in these cases. The PSC filed their proposed Case Management Order on February 25, 2015. Several Defendants filed alternative proposals shortly thereafter.

3. Counsel for the Maryland Box Hill Plaintiffs and the Box Hill Defendants parties have since conferred and agree to the following stipulations regarding the Box Hill Defendants’

¹ Plaintiffs in *Handy* do not make a claim for Respondeat Superior, but Plaintiffs in the other cases do.

² Plaintiffs in *Handy* do not make a claim for strict liability, but Plaintiffs in the other cases do.

MTD:

- a. The Box Hill Defendants maintain their arguments to dismiss all of the Maryland Box Hill Plaintiffs' claims as outlined in their Motions to Dismiss.
- b. The Maryland Box Hill Plaintiffs maintain that all of their claims should not be dismissed.
- c. In the interests of judicial efficiency, however, the Maryland Box Hill Plaintiffs and the Box Hill Defendants request the Court enter the Proposed Case Management Order, attached hereto as Exhibit 1 in which the parties consent to the Court ruling on the Box Hill Defendants' Motions to Dismiss in these cases. The constructive result of the Proposed Order dismisses the Maryland Box Hill Plaintiffs' claims for battery, respondeat superior, and civil conspiracy, while denying Defendants' Motions to Dismiss the Maryland Box Hill Plaintiffs' claims of negligence, informed consent, wrongful death, and loss of consortium. The Court would still have to decide issues of strict liability, alleged violations of consumer protection statutes, and punitive damages. For the avoidance of any doubt, to the extent the foregoing Stipulation and/or the executed Proposed Case Management Order does not already preserve each party's rights to appeal said rulings on the Box Hill Defendants' MTD, then the parties agree to preserve and to take all necessary reasonable steps and measures to effectuate the preservation of each parties' rights to appeal the MDL 2419 Court's rulings and the reasoning as to any of the Maryland claims involved in the MTD.
- d. The Maryland Box Hill Plaintiffs will file oppositions to the remaining counts and prayers for damages in their respective complaints that Defendants have moved to dismiss (Strict Liability, Maryland and Massachusetts State Consumer Protection Statutes, and Punitive Damages).

- e. The Parties propose the Court allow the Plaintiffs forty-five (45) days, from the date the Court enters the attached proposed Order, to file their oppositions to the remaining counts and prayers for damages in their respective complaints that Defendants have moved to dismiss, and the Defendants thirty (30) days to reply to their oppositions. The parties also propose that argument be scheduled for the July, 2015, NECC Status Conference hearing.
- f. Notwithstanding the stipulations above, the Parties agree that Common Issue Discovery will proceed as set forth in Magistrate Judge Boal's MDL Order No. 9, Order Regarding Common Issue Discovery, dated September 18, 2014.

IN WITNESS WHEREOF, the parties acting through their respective counsel, duly authorized, so assent to the above stipulation and the entry of the proposed CMO by the court.

/s/ Sharon L. Houston
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CERTIFICATE OF SERVICE

I, Sharon L. Houston, hereby certify that a copy of the foregoing document, filed through the CM/ECF system will be accessible to those attorneys who are registered with the Court's electronic filing system and Notice of Electronic filing (NEF), including the attorneys representing the defendants in the above-referenced individual cases, and will be sent to these parties by operation of the CM/ECF system on April 2, 2015.

/s/ Sharon L. Houston
Sharon L. Houston